IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Oklahoma Department of Securities *ex rel.* Melanie Hall, Administrator, Plaintiff/Appellee, v. Premier Global Corporation; Premier Factoring, LLC; Premier Factoring Group, LLC; PF-2, LLC; PF-3, LLC; PF-4, LLC; PF-5, LLC; PF-6, LLC; and PF-7, LLC, Defendants/Appellants.	Supreme Court No.120597 Oklahoma County District Court CJ-2021-4397

OKLAHOMA DEPARTMENT OF SECURITIES' RESPONSE TO APPELLANTS' EMERGENCY MOTION TO STAY PENDING APPEAL

What constitutes an emergency such that this Court should entertain the stay of an order and the proceedings of the District Court? Appellee asserts there is no emergency.

The *Order Imposing Sanctions* that Appellants ask this Court to stay by an emergency order, remains under consideration in the District Court. This active consideration began with Appellants' filing in the District Court of an earlier emergency motion to vacate or stay the *Order Imposing Sanctions* on the due process issues they raise now. The District Court then provided Appellants with a hearing on that emergency and the opportunity to brief and argue that the order be vacated. The District Court expeditiously set another hearing for August 19, 2022, to further consider Appellants' motion to vacate the *Order Imposing Sanctions* that is now also the subject of Appellants' assertion that an emergency exists here. If Appellants fail to convince the District Court to vacate the *Order Imposing Sanctions* on August 19, 2022, the time would then be ripe for an appeal and consideration of whether an emergency exists.

The premature filing of this appeal allows Appellants to continue their efforts to keep Appellee in the dark by seeking to further delay compliance with lawfully issued subpoenas and two court orders that have been issued as a result of their noncompliance. It is time to shine a light on the egregious efforts of Appellants.

For almost two (2) years, Appellants have obfuscated a lawful regulatory procedure initiated by Appellee to determine whether Appellants have engaged in violations of the Oklahoma securities laws. By failing to produce the subpoenaed records, Appellee is unable to verify the accuracy of actual and historic revenue representations upon which Oklahoma investors relied in considering whether to part with millions of dollars. That is the true emergency.

STATEMENT OF RELEVANT FACTS

1. Premier Global Corporation ("Premier") is a Kansas corporation with its principal place of business in Derby, Kansas. Premier purports to operate a business whereby it raises money from investors to fund the factoring of invoices. The remaining Appellants are entities formed by Premier to engage in the factoring business (the "PF Entities"). According to representations in offering documents, the PF Entities offer securities to investors through promissory notes with one-year terms and bearing an annual interest rate of ten percent (10%). The stated purpose of each offering and the source of revenue to repay investors is clearly described in the offering documents as the factoring and collection of invoice payments.

2. Appellants are believed to have received in excess of $70,000,000 from numerous investors in nineteen (19) states, including a large number of investors who are residents of the state of Oklahoma.

3. Appellants are raising money from these investors while making claims that

they have annual revenue of between $100,000,000 to $200,000,000.

4. The securities offered and sold in Oklahoma have not been registered under the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2022), and no notice of a claim of exemption from such registration has been filed with the Administrator.

5. In August 2020, Appellee received information indicating that possible violations of the Act may have occurred in connection with the offer and sale of securities by Appellants, their principal officers and agents.

6. Appellee initiated an investigation into the offer and sale of those securities and issued subpoenas ("Subpoenas") on August 10 and 11, 2020, to each Appellant pursuant to Section 1-602(B) of the Act, which provides:

> For the purpose of an investigation or proceeding under this act, the Administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Administrator considers relevant or material to the investigation or proceeding.

7. The Subpoenas were virtually identical and required that Appellants produce certain documents. Appellants produced documents but objected to one critical category of the document production.[1]

8. In October 2020, Appellants produced records, of their choosing, relating to a limited number of invoice transactions. This information was purported to include all supporting documents reflecting the "life cycle" of the factored invoice transactions.

9. In July 2021, counsel for Appellants provided Appellee with a factored invoice "life cycle" example and explained that production of an invoice, in isolation, does not provide

[1] The objection relates to Item No. 5 of the Subpoenas requesting: "Documents identifying all invoices and receivables acquired and/or purchased by you including the names of all vendors and payees of such invoices and receivables."

a complete picture of the factoring activity. This single invoice example consisted of nine (9) pages of specific business records along with seven (7) pages of flow charts, exhibits and explanations. Appellants' counsel reiterated that such "start to finish" documentation was necessary to understand the "life cycle" of a factored invoice.

10. Following months of failed attempts to negotiate the outstanding required production of the invoice factoring records, Appellee requested the assistance of the District Court and filed the October 15, 2021 *Application for Order Enforcing Administrative Subpoenas and Authority in Support* (the "Application"). In the Application, Appellee also requested the issuance of an injunction and the imposition of a civil penalty as authorized by Section 1-602(C) of the Act for Appellants' refusal to produce the records. While the subpoena enforcement action is a remedy that is rarely needed to be used by Appellee, the information requested by the Subpoenas is critical to verify Appellants' revenue claims made to investors.

11. A hearing on the Application was held on March 22, 2022 ("Hearing One"), and a Journal Entry was entered ("Order One"). The District Court, considering Appellee's initial request, substantially reduced the two (2) year time period covered by the Subpoenas to twelve (12) calendar days with the caveat that Appellee could apply to the District Court if additional invoice information is necessary. The District Court also ordered that Appellants produce the records specified in Item No. 5 of each of the Subpoenas, along with all necessary "supporting documents related to the factoring of said invoices". Order One required that these documents be produced by June 2, 2022 ("Deadline One").

12. In connection with the requirement of Order One to produce the factored invoices and all supporting documents, counsel for Appellants agreed in April of 2022, that such supporting documents would include the following items: subcontractor applications for

factoring or billing; billing service and advance payment fee schedules; and balance release statements.

13. After Appellants failed to produce a single document in compliance with Deadline One, the *Appellee's Emergency Application for Equitable and Other Relief* ("Emergency Application") was filed. Appellee reasserted its request for the issuance of an injunction and the imposition of a civil penalty as authorized by the Act.

14. A hearing on the Emergency Application was held by the District Court on June 13, 2022 ("Hearing Two"), and the District Court again ordered Appellants to "completely produce all records specified by the Order" ("Order Two") no later than July 1, 2022 ("Deadline Two"). Further, the District Court specified that should Appellants fail to completely comply, an order "will be entered enjoining Appellants from any further offers, sales or renewals of any securities, as defined by the [Act], in and/or from the state of Oklahoma, and imposing a civil penalty in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00)".

15. At Hearing Two, counsel for Appellee confirmed the directives of the District Court for the clarification of all parties:

> "... the journal entry required that those invoices, the records associated with those invoices also be produced out to their - - what we at the hearing called the end of their "life cycle"; so from the origination of the invoice out to its ultimate payment, full payment by the outside general contractors."

16. Appellants produced documents in response to Order Two by Deadline Two without an affidavit to indicate the completion of the production and a list briefly identifying each document or other material and its custodian, as required by the Subpoenas.

17. Appellants produced a limited and inadequate number of records in response to Order Two. Appellants violated Order Two by producing records that: (A) were clearly

inconsistent with any previously produced documents; and (B) lacked the data previously provided in the billing service and advance payment fee schedules and the balance release statements. This production failed to provide the "life cycle" for each factored invoice as was thoroughly described during Hearing One and Hearing Two, when counsel for Appellants explained why the "life cycle" of the invoice factoring transactions was necessary for a complete revenue picture.

18. After a thorough review of the production, Appellee requested that the District Court impose the sanctions it dictated to Appellants during Hearing Two.

19. The District Court entered the Order Imposing Sanctions ("Order Three") on July 11, 2022, finding Appellants failed to comply with Order Two and enjoined Appellants from any further offers, sales or renewals of any securities, in and/or from the state of Oklahoma. Further, the District Court imposed a civil penalty in the amount of Two Hundred Fifty Thousand Dollars ($250,000).

20. Appellants filed an *Emergency Motion to Vacate Order Imposing Sanctions or, in the Alternative, to Stay Order Pending Appeal*, claiming a lack of due process. The District Court granted an emergency hearing for July 26, 2022 ("Hearing Three").

21. At Hearing Three, counsel for Appellants insisted the hearing was only to deal with their perceived due process issue and not the lack of compliance with the Subpoenas and Order Two. Counsel for Appellants did not take advantage of the opportunity to prove to the District Court that Appellee's assertions were wrong.

22. After argument from both parties, the District Court denied the emergency relief and set a hearing for August 19, 2022, Appellants' counsels' earliest available date, in order to address Appellants' motion to vacate, compliance with its orders, and the due process issue.

ARGUMENT

This Court should deny the stay in this proceeding. Appellants do not meet the factors set forth in Supreme Court Rule 1.15(c)(2). As outlined below, the District Court is the appropriate forum for this matter, particularly in light of the upcoming August 19, 2022 hearing. The Court should not let this untimely appeal stay that proceeding or stay the efforts of Appellee to protect Oklahoma's investing public.

I. Appellee is likely to succeed on appeal.

Due process does not require endless hearings. Appellants had notice and an opportunity to be heard when they: (A) were served with an application to judicially enforce the Subpoenas; (B) were granted hearings before the District Court with opportunities to brief the matters; (C) were specifically told by the District Court what was to be produced based on counsel for the Appellants' own arguments; and (D) were directly admonished in Hearing Two by the District Court as to what sanctions would be imposed for their failure to comply, which was subsequently memorialized in Order Two. There can be no misunderstandings of the documents required for compliance.

The proceedings, from the issuance of the Subpoenas by Appellee, to the initial pleading to enforce the Subpoenas in late 2021, to Hearings One, Two and Three before the District Court, all related to Appellants' failure to produce a very defined and necessary set of lawfully subpoenaed records. There is no merit to their argument that due process required a fourth hearing. The frivolity of this appeal is even more apparent since the fourth hearing before the District Court is scheduled for August 19, 2022.

In October 2020, Appellants produced representative samples, of their choosing, that purported to represent invoice factoring activity. Subsequently, in July of 2021, counsel for

Appellants provided Appellee with a single factored invoice example and explained that production of an invoice, in isolation, does not provide a complete picture of the factoring activity. At every turn, Appellants have proven to the District Court through exhibits and oral arguments what Appellee claims, that is, Appellee has not received the necessary data to determine whether fraud has occurred and is continuing to occur.

Appellee submitted sufficient documentary evidence to the District Court that established Appellants did not provide documentation demonstrating the "life cycle" of the factored invoices in their July 1, 2022 production. The evidence clearly established that there was no material issue of fact regarding the sufficiency of Appellants' production. This evidence was enough for the District Court to issue Order Three without an evidentiary hearing. See, *CFTC v. Premex, Inc.* 655 F.2d 779, 782 n.2 (7th Cir. 1981).

During Hearing Three, the District Court allowed Appellants the opportunity to be heard on their motion to vacate the injunction and civil penalty. However, in its opening statement, Appellants informed the court that they wanted only to address due process. Following arguments in Hearing Three, the District Court set the August 19 evidentiary hearing to allow Appellants to show their compliance with its orders and to further their due process argument.

This is not a civil litigation discovery dispute but, rather, it is a matter seeking legislatively prescribed public protection. By design, enforcement of the Act and therefore, public protection, begins with investigations using granted subpoena authority. To ultimately effectuate this public protection, the Act provides courts with the authority to impose specific remedies such as injunctions, when those investigative powers are ignored. From the outset,

Appellants have refused to comply with the Subpoenas. These refusals alone justify the issuance of the injunction pursuant to Section 1-602 of the Act.

The District Court could have imposed the sanctions at issue following Hearings One and Two. Ample notice and multiple opportunities to be heard, combined with the specifically identified remedies, equates to far more than just a likelihood of success on appeal. Fulfilling the legislative mandate of public protection from an issuer who fails to comply with validly issued and relevant Subpoenas makes success on appeal highly likely. Section 1-602, when combined with the broad discretion of the courts in granting or denying injunctive relief, makes success on even more probable.

The offer and sale of the securities by Appellants dictates compliance with all applicable provisions of the Act, to include full compliance with investigations. Appellants have continually refused to comply with the Subpoenas. These refusals alone justify the issuance of the injunction and the imposition of the civil penalty pursuant to Section 1-602 of the Act. A court has complete discretion to grant or deny injunctive relief, and an injunction should only be overturned if there is an abuse of discretion or the weight of the evidence is clearly against the decision. *City of Tulsa v. Raintree Estates I, Inc.*, 2007 OK CIV APP 41, 162 P. 3d 929, 933. The District Court did not abuse its discretion in applying the remedies authorized by Section 1-602.

There is a substantial likelihood that this Court will agree that Appellee should prevail on this appeal.

II. There is a threat of irreparable harm to the investing public in the state of Oklahoma if Order Three is lifted.

"The Oklahoma Securities Commission and the Oklahoma Department of Securities are created by statute, with the Commission as the policy-making and governing authority of

the Department. 71 O.S. Supp.2003 § 1–601(B). The Oklahoma Department of Securities (or Department), as a public agency, possesses those powers expressly granted by law, by constitution or statute, *and such powers as are necessary for the due and efficient exercise of the powers expressly granted,* or such as may be fairly implied from the constitutional provision or statute granting the express powers. *Oklahoma Public Employees Ass'n v. Oklahoma Dept. of Central Services,* 2002 OK 71, ¶¶ 25–27, 55 P.3d 1072, 1083–1084 (emphasis added)". *Oklahoma Dep't of Sec. ex rel. Faught v. Blair*, 2010 OK 16, ¶ 9, 231 P.3d 645, 651–52, *as corrected* (Apr. 6, 2010).

This case involves numerous investors throughout the state of Oklahoma. Appellants have received in excess of $70,000,000 from investors in at least nineteen (19) states through their issuance of securities.

Appellants have employed numerous unregistered sales agents to solicit investments from Oklahoma residents in violation of the Act. Some of these agents are recidivist securities law violators, including one who has been the subject of multiple actions by Appellee for violations of the Act, including a criminal contempt conviction. One of the principals controlling Appellant entities is also the subject of a securities related order from the Office of the Kansas Securities Commissioner for his part in selling securities in what was found to be a nationwide Ponzi scheme.

The offering documents state that investor proceeds will be used for the purchase of invoices. Production of the invoices and supporting documents is necessary to determine whether such representations are accurate. In fact, whether such invoicing activity exists, and whether it exists in sufficient quantity to be able to repay investors and remain a going concern, is the most important aspect of the investigation. The production of invoicing records and their

supporting documents is also indispensable to determine whether Appellants had, in connection with the offer and sale of millions of dollars of securities, violated Section 1-501 of the Act.

It is critical to follow the money in a complex investigation of potential securities fraud. That is why it is so important that Appellee see the complete "life cycle" of a factored invoice. Rarely, has the Appellee had to go to these extremes to obtain necessary evidence. The remedies authorized by Section 1-602 of the Act, i.e., the issuance of an injunction and the imposition of a civil penalty, were adopted into law for the very reasons present in this case. Appellants' disregard for both the lawfully issued administrative subpoenas and the orders of the District Court have hampered Appellee's ability to determine the extent of the Appellants' violations of the securities laws. This represents a clear danger to the citizens of this state that Appellee has been mandated to protect.

A stay issued by this Court poses a great threat of irreparable harm.

III. Allowing the District Court proceeding to go forward will not harm Appellants.

For almost two (2) years, Appellants have continued to circumvent a regulatory investigation commenced to protect the investing public. Order Three simply allows for such protection. Even with Order Three in place, Appellants can continue their factoring business in all states, including the state of Oklahoma, so long as they do not offer and sell securities in this state to fund these activities.

IV. A stay would harm the public interest.

A stay of Order Three and the ongoing District Court proceeding will harm the mission of the Appellee and the investing public.

CONCLUSION

There is no emergency affecting the Appellant for the Court to address. Appellants were clearly provided ample due process throughout this matter and willfully continued to ignore the Subpoenas and District Court orders. The District Court could have imposed the sanctions at issue following Hearings One and Two. A stay of Order Three and the ongoing District Court proceeding will harm the mission of the Appellee and the investing public.

The District Court has set what will be "Hearing Four" on August 19, 2022, for Appellants to demonstrate compliance with its orders and the due process issue. A stay should not be granted, and the District Court proceedings should be allowed to continue.

Respectfully submitted,

Patricia A. Labarthe, OBA No. 10391
Shaun Mullins, OBA No. 16869
Jennifer Shaw, OBA No. 20839
Oklahoma Department of Securities
204 N. Robinson Avenue, Suite 400
Oklahoma City, OK 73102
Telephone: 405.280.7700
Facsimile: 405.280.7742
plabarthe@securities.ok.gov
smullins@securities.ok.gov
jshaw@securities.ok.gov

Attorneys for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I certify that on the 5th day of August 2022, a true, correct, and exact copy of the above and foregoing instrument was mailed was mailed to the following person with proper postage thereon fully prepaid, via first-class mail and sent by electronic mail:

Amelia A. Fogelman
John D. Russell
Andrew J. Hofland
GABLE GOTWALS
110 North Elgin Avenue, Suite 200
Tulsa, OK 74120
afogelman@gablelaw.com
jrussell@gablelaw.com
ahofland@gablelaw.com
Attorneys for Defendants/Appellants

Patricia A. Labarthe